IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

MACA.No. 516 of 2003()

OPMV.1420/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY
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APPELLANT/PETITIONER:

SHYLAJA K., W/O. MANI,
KORAKANDY HOUSE, MATTANNUR P.O.,
NIRMALAGIRI, KANNUR.

BY ADV. SRI.P.NARAYANAN

RESPONDENTS: RESPONDENTS:
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1. P.C.MUHAMMED,
SHAKKEELA MANZIL, P.O. KUTHUPARAMBA,
KANNUR DIST.

2. SANTHOSH C.N., S/O. RAMAN,
CHALIL HOUSE, KEEZHATHUR, P.O. PATHIRIYAD,
PINARAYI, KANNUR DIST.

3. THE ORIENTAL INSURANCE CO. LTD.,
APEX CHAMBERS, THYAGARAJA ROAD,
T. NAGAR, MADRAS-17.

BY ADV. SRI.MATHEWS JACOB
SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A.No.516 of 2003

Dated this the 26th November, 2007.

J U D G M E N T

Petitioner in O.P.(M.V.) No.1420/1998, on the file of the Motor Accidents Claims Tribunal, Thalassery, is the appellant. Appellant along with her mother were travelling in a stage carriage bus bearing Registration No.KRN 2115. When the vehicle reached 6th Mile, it capsized and appellant, her mother and others sustained injuries. Appellant filed O.P.(M.V.) No.1420/1998, and her mother filed O.P. (M.V.) No.1421/1998. Appellant did not produce any documents pertaining to criminal case. She produced only the medical records. No petition for joint trial of this case along with O.P.(M.V.) No.1421/1998 was filed. So, the Tribunal considered these two petitions separately. Since the appellant did not produce documents regarding the criminal case, and also failed to adduce oral evidence, her application was dismissed. But the petition filed by the appellant's mother was allowed. Challenging the award dismissing the claim, this appeal is filed.

2. The fact that O.P.(M.V.) No.1421/1998 was filed by the mother of the appellant who sustained injuries in the very same accident is not disputed. The fact that, in that case, the Tribunal found that accident occurred due to the negligence of the driver of the bus and directed the 3rd respondent Insurer to pay compensation, is also not disputed. So, I am of the view that it is only just and proper that the appellant be given another opportunity to adduce evidence to substantiate her contentions. For that purpose, the case has to go back.

3. In the result, appeal is allowed. The award passed by the Tribunal dismissed O.P.(M.V.) No.1420/1998, is hereby set aside. The case is remanded back to the Tribunal for fresh disposal in accordance with law, after giving the parties a reasonable opportunity to adduce further evidence.

Parties shall appear before the court below on 3.1.2008.

K.PADMANABHAN NAIR,
JUDGE

nj.